IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH, JAIPUR.

O R D E R

1. Chief Executive Officer, Rajasthan Board of Muslim Wakf, Jaleb Chowk, Jaipur & others
Vs.
Islamuddin & another

(S.B. Civil Revision Application No.38/2007)

2. Chief Executive Officer, Rajasthan Board of Muslim Wakf, Jaleb Chowk, Jaipur & others
Vs.
Akther Hussain & another

(S.B. Civil Revision Application No.31/2007)

3. Chief Executive Officer, Rajasthan Board of Muslim Wakf, Jaleb Chowk, Jaipur & others
Vs.
Mohd. Yashin & another

(S.B. Civil Revision Application No.32/2007)

4. Chief Executive Officer, Rajasthan Board of Muslim Wakf, Jaleb Chowk, Jaipur & others
Vs.
Mohd. Ibrahim & another

(S.B. Civil Revision Application No.33/2007)

5. Chief Executive Officer, Rajasthan Board of Muslim Wakf, Jaleb Chowk, Jaipur & others
Vs.
Shameem Ahmed & another

(S.B. Civil Revision Application No.34/2007)

6. Chief Executive Officer, Rajasthan Board of Muslim Wakf, Jaleb Chowk, Jaipur & others
Vs.
Wakf Committee Kasba Sambhar Lake, District Jaipur through Sadar Abdul Karim Patel & others

(S.B. Civil Revision Application No.35/2007)

7. Chief Executive Officer, Rajasthan Board of Muslim Wakf, Jaleb Chowk, Jaipur & others
Vs.
Abdul Rasid Paper Wala & another

(S.B. Civil Revision Application No.37/2007)

Date of Judgment :: April 27, 2007

PRESENT
HON'BLE DR. JUSTICE VINEET KOTHARI

Mr. M.C. Taylor for the applicants.
Mr. S.M. Ali)
Mr. Z.A. Naqvi) for the non-applicants.
Mr. Amod Kasliwal)

REPORTABLE **BY THE COURT**:

1. In this batch of revision petitions filed U/s.83(9) of the Wakf Act, 1995 (for short, the 'Act'), a short but interesting question arises for consideration by this Court.

2. Under the provisions of Section 18 of the Act, the Wakf Board may, whenever it considers necessary, establish either generally or for a particular purpose or for any specified area or areas committees for the supervision of wakfs. The constitution, functions and duties and the term of office of such committees shall be determined from time to time by the Board and it shall not be necessary for the members of such committees to be members of the Board. The Wakf Board itself is constituted in accordance with Section 14 of the Act by a notification in the Official Gazette by the State Government and the term of office of the members of the Board shall be five years, vide S.15 of the Act. The present Board was constituted on 27.10..2005 comprising of 11 members, 6 elected members and 5 nominated by the State Government including the Chairman of the Board.

3. The controversy in the present case arises in relation to wakf property situated in Bharatpur for the administration and management of which a Wakf Committee headed by Janab Haji Islamuddin appointed as Sadar of the said Committee was appointed vide Annexure-3 dated 17.10.2003 for a term of three years. Vide Annexure-4 dated 21.12.2006 by an order passed by Chief Executive Officer of the Rajasthan Board of Muslim Wakfs, Jaipur, the Board passed an order that on account of expiry of term of specified 5 Committees, the charge of such 5 Committees be handed over to one Shri Rajendra Kumar Sharma, Inspector of the Wakf Board who will take charge of the wakf properties in question and this arrangement would continue till further orders. It was further directed by the said order that if the aforesaid 5 defunct committees do not hand over the charge, such appointed Incharge Shri Rajendra Kumar Sharma can approach the First Class Magistrate, Bharatpur U/s.68 of the Wakf Act and may also get special audit done U/ss.46, 47 & 48 of the Act and one Mr. Turabuddin was also appointed as assistant of the said Inspector Shri R.P. Sharma. It may be noted that the term of one of the committees at serial No.1 had expired on 20.8.2002 whereas the term of the remaining 4 committees expired on 17.12.2006 and, thus, the aforesaid order Annexure-4 was passed on 21.12.2006.

4. Aggrieved by the said order, the present respondents filed appeals before the Wakf Tribunal U/s.64(4) read with Section 67(4) which is constituted U/s.83 of the Act. The Tribunal allowed the said appeals by a common judgment dated 10.1.2007 holding that since the order dated 21.12.2006 was passed without complying with the principles of natural justice and without holding any enquiry and without a resolution being passed by 2/3rd

majority, the said orders were illegal and, therefore, were liable to be set aside.

5. Being aggrieved by the said order of the Tribunal dated 10.1.2007, the present revision petitions have been filed by the Chief Executive Officer, Rajasthan Board of Muslim Wakf, Jaipur; Chairman, Rajasthan Board of Muslim Wakf, Jaipur; and Rajasthan Board of Muslim Wakf U/s.83 (9) of the Act.

6. Mr. M.C. Taylor, learned counsel appearing for the petitioners submitted that the appeals filed before the Tribunal were not even maintainable because with the expiry of the term of the Committee, it became automatically defunct and non-existent and, therefore, there was no question of any supersession of the Committee in question nor any question of removal of Mutawalli arose U/s.67(2) or Section 64(1) of the Act and, therefore, the appeal itself was incompetent and could not be entertained by the Tribunal constituted under the Act of 1995. He submitted that firstly there was no reason of any grievance to the respondents upon the expiry of term of the Committee and if at all there was some grievance, they could either file civil suit in the competent civil court or could approach the High Court by way of writ petition but the appeal U/s.83 of the Act was misconceived and, therefore, the impugned order passed by the Tribunal allowing such appeals was itself without jurisdiction and, therefore, the present revision petitions deserve to be allowed. Further making his submissions he urged that the Wakf Board should be permitted to constitute new committees for these wakf properties but since there was a stay order directing the parties to maintain status quo in these revision petitions, the Wakf Board could not do so and the Wakf Board is ready and willing to undertake the exercise for

appointment of new committees within a period of four weeks. He submitted that since the committee appointed vide Annexure-3 dated 17.12.2003 was not a committee appointed by the Wakf nor the said committee was removed or superseded U/s.67(2) of the Act which envisaged a committee which is not functioning properly and satisfactorily or that the Wakf was being mismanaged, the Board may supersede such committee and only if the said order was passed in exercise of powers U/s.67(2) of the Act, the question of a show cause notice or enquiry would arise and such orders could be made subject matters of appeal to the Tribunal U/s.67(4) of the Act. He further submitted that, therefore, question of invoking Section 67(5) of the Act which requires the Board when it supersedes any committee under sub-section (2) to constitute a new committee of management simultaneously with the order made by it under sub-section (2), does not arise. On the same analogy, respondent No.1 Haji Mohd. Islamuddin could not said to be a Mutawalli after expiry of term of the committee on 17.12.2006 and, therefore, there was no question of removal of a Mutawalli as far as respondent No.1 Haji Mohd. Islamuddin was concerned U/s.64 of the Act in which also an appeal lies only if such removal is on the grounds specified in clause (c) to (i) of sub-section (1) of Section 64 of the Act.

7. He relied upon the judgment of this Court in **Shokat Ali Ansari Vs. State of Rajasthan and another** [2000 (1) RLR 335] wherein the learned Single Judge of this Court held that where the petitioner was initially nominated by the State Government as a member of Wakf Board and thereafter was elected as Chairman where the term of the Board was upto 2.1.1996 and on 1.1.1996 new Wakf Act, 1995 came into force, therefore, petitioner submitted his resignation in December, 1995 but by nofification dated 2.1.1996 petitioner's term was extended with other

members of the Board till reconstitution of the Board under the new Act and the petitioner had completed his term of 5 years, instead of reconstituting the Board, the State Government by order dated 12.1.1999 appointed respondent No.2 as the Administrator of the Board, the Court held that it has to be presumed that the term of petitioner and other members was extended till further orders and it is not necessary that till new Board is constituted they should be continued. Therefore, appointment of Administrator till reconstitution of Board was not illegal, though there is no provision under the new Act for appointing Administrator, however, there was no clear-cut provision for not making such appointment and, thus, the writ petition filed by Shokat Ali Ansari was dismissed by the learned Single Judge. The matter was taken in Division Bench by way of D.B. Special Appeal No.154/99 which was disposed of on 19th May, 1999 by holding as under:-

> "Though the language of the notification dated 2nd January, 96 Ex.P/1 to the petition is defective in the sense that it speaks of the Board as a whole and not of the Chairman/ Chairperson or individual members as such. Actually, it was not even necessary to issue such an order of extension because under both the Acts the Chairman/ Chairperson and the members could continue in office after their resignation (in this case the expiry of their term) till the new Chairman/ Chairperson and members enter office. We also conclude that there being no provision for appointment of an administrator replacing the entire body of the Board the appointment of Administrator by order dated 12.1.99 was illegal and without authority of law.
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> However, looking to the fact that the learned Single Judge has given six months time to reconstitute the Board

> which would expire on 11.7.99 and looking to the fact that the operation of the order passed by the learned Single Judge was not stayed in this appeal as also looking to the fact that the appellant himself had in his letter dated 15.12.98 Annexure P/A to the petition to the then State Minister for Wakf, Govt. of Rajasthan, Jaipur had in clear terms stated that beyond 31st March, 99 it would not be possible for him to continue to discharge the functions of the Chairman of the Board. We do not find it just and proper to quash the order appointing the Administrator. Moreover, in the affidavit filed on behalf of the State Govt. on the directions of the Govt. in this appeal it has been stated that the process of Election for the constitution of the Board under Section 14(2) of the Act of 1995 has already been started and as per the programme the process will be completed before 11.7.99 the outer limit given by the learned Single Judge for constitution of the Board.
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> In view of all this, we dispose of this appeal accepting the assurance of the State Govt. that it shall complete the process of reconstitution of the Board up to 11.7.99. Needless to add, immediately on the reconstitution of the Board the Administrator shall cease to function."

8. On the side opposite, three learned counsels made their respective submissions. Mr. S.M. Ali, Mr. Z.A. Naqvi and Mr. Amod Kasliwal and all the learned counsels were heard at length.

9. The common argument which was raised by all the three learned counsels was that in effect and in substance Annexure-4 order dated 21.12.2006 amounted to supersession of the committee and removal of Mutawalli though apparently the said order did not say so and it

was made to appear as an innocuous order passed upon expiry of term of the committee though in fact it was not so. Learned counsel Mr. S.M. Ali tried to support this submission by referring to reply filed before the Tribunal by the Wakf Board in para 2/8 in which it was stated that the impugned order was issued in the interest of wakf because Collector, Bharatpur had made a report against appellant No.1 as to defalcation and fraud of Rs.20 lacs recommending action against appellant No.1. The immediate response of learned counsel for the Wakf Board to this was that this at best could be said to be motive behind passing of the order Annexure-4 dated 21.12.2006 but it was not the foundation thereof and the foundation was the expiry of the term of the committee. The second submission made by the learned counsel for the respondents was that since in effect the impugned order amounted to removal/ supersession of the committee, not only the appeal before the Tribunal was competent and maintainable but the same was also rightly allowed by the Tribunal because apparently there was no compliance with the principles of natural justice as no notice prior to passing of the impugned order was given to the respondents nor any enquiry of any sort was held in the matter and though the removal was stigmatic in nature as certain complaints were allegedly received against respondents and formed basis of passing the impugned order, therefore, the appeal was rightly allowed by the Tribunal.

10. Learned counsels for respondents further submitted that it was also expedient in the interest of justice to call for and examine the record of the Wakf Board itself in this regard as to what transpired before passing of the impugned order on 21.12.2006 but the said request was opposed by Mr. Taylor albeit wrongly, according to the learned counsel for the respondents. The third submission

made by the learned counsels for the respondents was that the wakf properties in question which were managed and administered by the said 5 committees were very large and huge properties and it was absolutely impossible and impractical for one or two persons namely Inspector of the Wakf Board sitting at Jaipur to manage such properties and also the very purpose of appointing committees of responsible and respectable persons of the community would be frustrated if an official of Wakf Board was to be given charge to manage all these properties. They further submitted that in fact the Board though comprised of 6 elected members and 5 nominated members, the nominated members of State Government were working arbitrarily and wanted to supersede the elected members and, therefore, they were not in fact inclined to constitute new committees though respondents had no personal interest in the matter and they would also welcome quick appointment of new committees to manage the affairs of the wakf properties instead of leaving the same in the hands of one or two officials of the Wakf Board.

11. It was also brought to the notice of the Court that in fact the decision to file the present revision petitions taken vide resolution No.35/2007 by the Board in its emergency special meeting held on 13.1.2007 itself was revoked in a subsequent meeting held on 17.3.2007 vide resolution No.44/2007 and in the said meeting of 17.3.2007 whereby the resolution Nos.35/2007, 36/2007 and 37/2007 taken in the previous meeting dated 13.1.2007 were revoked and deleted and, therefore, the present revision petitions themselves were without proper authority and could not be pursued by the Wakf Board. Though it may be noticed here that the present revision petitions were filed on 27.2.2007 before the aforesaid resolution dated 17.3.2007 was taken and Mr. Taylor,

learned counsel for the petitioners upon being asked specifically submitted that he had no instructions to withdraw these revision petitions and, therefore, he could rightly pursue and prosecute the same. It was also brought to the notice of the Court that a writ petition was filed at the principal seat of this Court at Jodhpur namely S.B. Civil Writ Petition No.449/2007 by Hazi Islamuddin showing himself to be son of Shri Suleman and resident of 45, Matta, Bhopalpura, Udaipur whereas the respondent No.1 Haji Islamuddin was in fact a resident of Bharatpur and was appointed as Sadar of the committee at Bharatpur and though the cause of action arose at Bharatpur/ Jaipur, the said writ petition was filed at principal seat at Jodhpur in which notices were issued by the learned Single Judge on 13.2.2007 and the matter is said to be pending there. In the said writ petition, the minutes of meeting dated 13.1.2007 have been called in question and challenged.

12. Lastly, learned counsel for the respondents also pointed out that respondent No.1 Haji Islamuddin was recognised as Mutawalli as would appear from the list prepared by the Rajasthan Wakf Board U/s.14(2) of the Act read with Rule 6(3)(c) of the Rajasthan Wakf Board (Election of Members) Rules, 1999, in which name of respondent No.1 Haji Islamuddin appears at serial No.53 and, therefore, learned counsel submitted that removal of Mutawalli respondent No.1 could be only made in accordance with Section 64 of the Act.

13. Having heard the learned counsel and upon perusal of the record and after giving my thoughtful consideration to the relevant provisions and case laws it appears that Annexure-4 order dated 21.12.2006 per se cannot be faulted in the eye of law. The said order clearly stipulates that upon expiry of the term of the specified

committees the alternative arrangement as specified in second part of the order was being made. The expiry of term of any committee by itself cannot be taken to be removal or supersession of the committee. As a matter of fact, there was no need to pass any such order upon expiry of term of the committee. It may be noticed that the said committee was only appointed in terms of Section 18 of the Act and it was neither a committee appointed or constituted U/s.67(1) of the Act which is the committee appointed by the wakf itself. The 'wakf' as defined in Section 2(r) of the Act means the permanent dedication by a person professing Islam, of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable. In other words, it is a trust. It is a trust as understood in Hindu law. A trust can be created by an instrument or document of dedication of an immovable and movable property. Similarly, if a wakf created by an instrument or deed of dedication constitutes a committee for administration and management of such wakf property, that would be governed by the provisions of Section 67 of the Act. The present committee being not one appointed or constituted U/s.67 of the Act, there is no question of applying the remaining provisions of Section 67 of the Act to such committee. For the same reason, provisions of Section 64 also would not apply as there is no removal of Mutawalli as such in the present case, therefore, as far as the contention of learned counsel for the respondents that without following the procedure U/s.67(2) read with Section 67(4) and 67(5) of the Act, the impugned order could not have been passed, this Court finds no force in this submission. For the same reason, the respondent No.1 Haji Islamuddin cannot be said to have been removed from the post of Mutawalli upon expiry of term of the committee on 17.12.2006 as none of the grounds specified in Section 64(1) from clause (c) to clause (i) have been

applied or invoked by the Wakf Board against him, therefore, to this extent, the impugned order Annexure-4 dated 21.12.2006 cannot be said to be stigmatic against the respondents and, therefore, requirement of holding an enquiry into the matter does not arise in the present case. Therefore, as far as question of allowing the appeal by the Tribunal on the ground of alleged non compliance with the principles of natural justice is concerned, the same cannot be sustained in the eye of law. The impugned order of Tribunal dated 10.1.2007 is accordingly set aside.

14. But, at the same time, one cannot lose sight while exercising revisional jurisdiction of the very purpose of wakf property being managed by the Wakf Board and through committees appointed and constituted either by the instrument of wakf itself or committees appointed by the Wakf Board in terms of Section 18 of the Act. While both the parties were common on the issue of appointment of new committees in terms of the provisions of Section 18 of the Act even for the wakf properties in question as early as possible, learned counsels for the respondents expressed their apprehension that the Wakf Board in fact may not appoint new committees as quickly as possible within a period of four weeks as submitted by the learned counsel for the Wakf Board but they may also ignore elected members of the Wakf Board and with the State Government nominated members alone they may constitute new committees which may cause prejudice not only to the present respondents but also to the wakf properties as such. In the opinion of this Court, this aspect of the matter can be taken care by directing the Wakf Board to undertake the exercise of appointment of new committees within a period of four weeks from today after service of notice to all the members nominated as well as elected members of the Wakf Board for such meeting which may

consider appointment of new committees and naturally the decision of majority would prevail. Till such committees are constituted, since the present committees are continuing to work under the status quo orders granted by this Court which is continued, the same arrangement may continue till such new committees are appointed and take over the charge of wakf properties in question. This Court is of the view that it may be really difficult and impracticable for one official or two officials of Wakf Board who have been appointed as incharge in Annexure-4 order dated 21.12.2006 upon expiry of term of the committees to really administer and manage all the wakf properties in question. The intention of the Act also appears to get the wakf properties managed either by the committees constituted in the instrument of wakf itself or by the Board or committees appointed by the Board U/s.18 of the Act.

15. Therefore, the second part of impugned order dated 21.12.2006 appointing Mr. R.P. Sharma, Inspector as Incharge of these committees and Mr. Burabuddin, as his assistant is set aside and it is directed that the Wakf Board may undertake the exercise for appointment of new committees in place of the aforesaid 5 committees specified in Annexure-4 order dated 21.12.2006 within a period of four weeks from today after notice of such meeting to all the 11 members of the Board nominated as well as elected members is served and a majority decision of the members present in the said meeting may decide to constitute the new committees. Till such decision is taken, the present committees shall continue to work in the best interest of the wakf properties and maintain true and faithful account of any financial expenditure, income or investment made by them meticulously which shall be open to inspection and audit by a competent authority of the Board in accordance with law.

16. With the aforesaid observations, these revision petitions are disposed of with no order as to costs.

(Dr.VINEET KOTHARI),J.

VS/